



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 220527-0125]

RIN 0648-BL24

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Extension of Period to Implement Decisions of the Western and Central Pacific Fisheries Commission Related to the COVID-19 Pandemic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; temporary specifications; request for comments.

SUMMARY: In response to the ongoing COVID-19 pandemic, this interim final rule extends the time period that temporary specifications issued to implement certain short-notice decisions of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) may remain in effect. This action also extends temporary specifications to implement two short-notice WCPFC decisions. NMFS is undertaking this action under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to satisfy the obligations of the United States as a Contracting Party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). NMFS seeks comments on this interim final rule and will respond to those comments in a subsequent final rule.

DATES: This interim final rule is effective on *[Insert date of publication in the FEDERAL REGISTER]*. Temporary specifications are effective on *[Insert date of*

publication in the **FEDERAL REGISTER**] until July 15, 2022. Comments on the interim final rule must be submitted in writing by *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on the interim final rule, identified by NOAA-NMFS-2022-0052, and the regulatory impact review (RIR) prepared for the interim final rule, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0052 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the RIR are available at www.regulations.gov or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808-725-5033.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention is concerned with the conservation and management of highly migratory fish stocks (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the western and central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the Commission, which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures adopted by the Commission and other decisions of the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention

Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: www.wcpfc.int/doc/convention-area-map.

Background on WCPFC Decisions in Response to the COVID-19 Pandemic

On April 8, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID-19, the Commission made an intersessional decision to suspend the requirements for observer coverage on purse seine vessels on fishing trips in the Convention Area through May 31, 2020. The Commission subsequently extended that decision several times, and the current extension is effective until June 15, 2022.

On April 20, 2020, in response to the international concerns over the health of vessel crews and port officials due to COVID-19, the Commission made an intersessional decision to modify the at-sea transshipment prohibition for purse seine vessels as follows - purse seine vessels can conduct at-sea transshipment in an area under the jurisdiction of a port State, if transshipment in port cannot be conducted, in accordance with the domestic laws and regulations of the port State. The Commission subsequently extended that decision several times but decided not to extend that decision past March 15, 2022.

On May 13, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID-19, the Commission made an intersessional decision to suspend the requirements for observer coverage for at-sea transshipments. The Commission subsequently extended that decision and the current extension is effective until June 15, 2022.

Background on NMFS's Regulations

NMFS regulations at 50 CFR 300.223(e) implement a WCPFC requirement for 100 percent WCPFC observer¹ coverage on purse seine vessels (with limited exceptions).

NMFS regulations at 50 CFR 300.216(b)(1) implement the WCPFC prohibition on at-sea transshipments for purse seine vessels.

NMFS regulations at 50 CFR 300.215(d) and 50 CFR 300.216(b)(2) implement WCPFC provisions regarding observer coverage for at-sea transshipments.

NMFS published an interim final rule on June 11, 2021, to establish a framework to implement short-notice decisions of the Commission (86 FR 31178; June 11, 2021) through temporary specifications. Under the framework, any temporary specification, including all extensions, may remain in effect for less than one year. Simultaneously, NMFS published temporary specifications to waive the regulations for WCPFC purse seine observer coverage, prohibitions on at-sea transshipment for purse seine vessels, and at-sea transshipment observer coverage. NMFS extended the duration of the temporary specifications and, based on the most recent WCPFC decision, the two temporary specifications on purse seine observer coverage and at-sea transshipment observers are currently in effect until June 10, 2022 (87 FR 21812; April 13, 2022). As described above, under the existing regulations at 50 CFR 300.228, the temporary specifications can only remain in effect for less than one year (*i.e.*, until June 10, 2022).

Based on the recent WCPFC intersessional decision and ongoing COVID-19 conditions worldwide, the temporary specifications to waive the regulations for WCPFC observer coverage and at-sea transshipment observer coverage must remain in effect after June 10, 2022. Thus, in this interim final rule, NMFS is extending the time period in

¹ A WCPFC Observer means a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's Regional Observer Programme. See 50 CFR 300.211.

which COVID-19 related temporary specifications may be effective from less than one year to no later than December 31, 2023, after which date the effective period will revert back to less than one year.

The Actions

Interim Final Rule: Extension of Time Period to Implement Decisions of the Western and Central Pacific Fisheries Commission Related to the COVID-19 Pandemic

This interim final rule extends the time period in which COVID-19 related temporary specifications may be effective from less than one year to no later than December 31, 2023, after which date the effective period will revert back to less than one year. Other temporary specifications issued under the framework will continue to be limited to less than one year in duration, and all temporary specifications issued under the framework will be limited to less than one year in duration after December 31, 2023.

Temporary Specifications: Implementation of Recent WCPFC Decisions that Need Immediate Implementation

NMFS is using the framework as set forth at 50 CFR 300.228 and as modified in this interim final rule, to extend the effective date of the temporary specifications implementing the two WCPFC intersessional decisions (WCPFC decision dated April 8, 2020, on purse seine observer coverage; WCPFC decision dated May 13, 2020, on at-sea transshipment observers), described above, that are in effect until June 15, 2022. The regulations to implement short-notice WCPFC decisions at 50 CFR 300.228 provide that temporary specifications to implement such short-notice decisions will remain in effect no longer than 30 days after the expiration of the underlying Commission decision.

Accordingly, the requirements of the following regulations are waived. Such waiver shall remain in effect until July 15, 2022, unless NMFS earlier rescinds or extends this waiver by publication in the **Federal Register** under the procedures set forth at 50 CFR 300.228(b) and (c):

- 50 CFR 300.223(e)(1). During the term of this waiver, U.S. purse seine vessels are not required to carry WCPFC observers on all fishing trips in the Convention Area. However, the regulations at 50 CFR 300.215(c)(1) that require all vessels with WCPFC Area Endorsements or for which WCPFC Area Endorsements are required to carry WCPFC observers when directed by NMFS remain in effect;
- 50 CFR 300.216(b)(2) and 50 CFR 300.215(d). During the term of this waiver, owners and operators of U.S. commercial fishing vessels fishing for highly migratory species in the Convention Area are not prohibited from at-sea transshipment without a WCPFC observer on board the offloading or receiving vessel.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this interim final rule is consistent with the WCPFC Implementation Act and other applicable laws.

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on the interim final rule and temporary measures included in this action, because prior notice and the opportunity for public comment would be contrary to the public interest. As stated above, two short-notice WCPFC decisions needing immediate extension have already gone into effect and NMFS is extending those two decisions through the framework process established at 50 CFR 300.228 as modified under this interim final rule. The most recent WCPFC decision extends the short-notice decisions until June 15, 2022, but NMFS has only been able to implement them via temporary specification until June 10, 2022, due to the less than one year duration of temporary specifications issued under the current provisions of 50 CFR 300.228. The extension established under this interim final rule would provide NMFS with the ability to carry out the obligations of the United States under the Convention,

including promptly extending the short-notice WCPFC decisions that address the COVID-19 pandemic. This interim final rule must enter into effect prior to June 10, 2022, in order for the United States to implement the current WCPFC decision, and thus prior notice and opportunity for public comment is not feasible given the short time frame available for the United States to implement the current WCPFC decision. NMFS will, however, consider and respond to public comments received on the interim final rule and will accordingly make any revisions should NMFS find that any are prudent or necessary.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective dates for the interim final rule and the temporary measures.

Executive Order 12866

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for the interim final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, no regulatory flexibility analysis was required and none has been prepared.

Paperwork Reduction Act

This interim final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: May 31, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

2. In § 300.228, add paragraph (e) to read as follows:

§ 300.228 Framework to implement emergency decisions.

* * * * *

(e) *Covid-19-related actions.* Notwithstanding paragraph (a) of this section, a temporary specification to modify or suspend regulations related to the COVID-19 pandemic may be continued, as appropriate, until December 31, 2023, after which time such temporary specifications shall be effective for a period of less than one year.

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